(Testimony of Milton R. Evans.)

suppose, the Department of Agriculture, or the War Shipping Administration. I will admit that. But I will by no means admit that the eggs described in this certificate were the eggs that were examined by this witness on the Gilbert Hitchcock on May 1.

Mr. Faulkner: You have Mr. Gordon under subpoena. Produce him.

The Court: I am prepared to rule. Until a proper foundation has been laid I will sustain the objection. Proceed.

Mr. Faulkner: Exception.

Q. Did you find on the day that you saw the eggs on the Gilbert Hitchcock 87.6 per cent AA eggs in the egg cases that bore a Department of Agriculture stamp?

A. No sir, not of AA's, definitely not.

Q. Did you find 10.4 per cent of A eggs in those that bore the Department of Agriculture stamp?

A. I found in excess of that.

Q. Did you find any U. S. Light Dirties?

A. I did not.

Q. None at all? A. I did not.

Q. Did you find any Checks?

A. Yes, I did.

Q. How many? What per cent?

A. This is out of the stamped cases, not the ones that are unstamped.

Q. Pardon me? I mean out of the United States Department of Agriculture stamped cases.

A. I found five of them.

(Testimony of Milton R. Evans.)

Q. Five of them?

A. Wait a minute. It would be [2579] between one and two per cent—a fraction. That would be an even two per cent, Mr. Faulkner.

Q. What?

A. An even two per cent of Checks out of those three cases that were stamped.

Mr. Faulkner: May I have Exhibit U?

The Court: To be perfectly frank about it, I have an appointment with the doctor at four o'clock. I am going to excuse the jurors until Tuesday morning at ten o'clock. The jurors may be excused. Keep in mind the admonition of the Court.

The Witness: Thank you, ladies and gentlemen. Thank you, sir. I appreciate your consideration.

(Thereupon the jurors were excused, and in their absence Counsel for the respective parties and the Court discussed the matter of Defendants' Exhibit AO for Idenification as pertaining to a shipment to the Gilbert Hitchcock on the 29th of April, after which an adjournment was taken until Tuesday morning, March 12, 1946, at 10:00 o'clock a.m.) [2580]

Tuesday, March 12, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Call the roll.

(The roll was called by the clerk.)

The Clerk: All present, your Honor.

Mr. Faulkner: At this time, if your Honor please, the defendants offer in evidence Defendants' Exhibits AA, which is an egg grading certificate relating to the John Muir; AN, relating to the Cape Cumberland; AO, relating to the Gilbert Hitchcock; AP, relating to the James Oliver; AQ, relating to the Czechoslovakia Victory; AU, relating to the Josiah Royce; AV, relating to the Edmund Ross; AW, relating to the Heber Creel; AX, relating to the William Coulter; and U, relating to the Cape Charles.

The Court: They may be admitted and marked.

Mr. Pratt: The last of those——

Mr. Faulkner: Subject to correction whether that is the Cape Chalmers or the Cape Charles. I won't use it at this time.

Mr. Pratt: Very well.

(Defendants' Exhibits for Identification AA, AN, AO, AP, AQ, AU, AV, AW, AX and U were thereupon received in evidence.) [2581]

MILTON R. EVANS,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Major Evans, at the time you were making your examination of eggs on these various ships, for what purpose were you making the examinations of the eggs that you testified to on your direct examination?

A. My understanding was that I was to grade the eggs for what I found from the information of the agents who were conducting the investigation.

Q. Yes. It was not in connection with an acceptance of eggs by the United States Army, was it?

A. My understanding was, as I described it, only to that extent: to determine the grade of eggs that were offered to me for grading.

Q. At that time did you have presented to you or did you see any egg grading certificates issued by the Department of Agriculture with respect to those eggs?

A. To the best of my memory I did not see any inspection forms at that time. I may have seen one or two but, generally speaking, no.

Q. You may have seen one or two?

A. Yes.

Q. Do you remember on what ship you saw them? A. I wouldn't recall, no sir.

Q. Do you recall who gave them to you?

A. As I recall, they were present among some papers which the agents obtained from someone on the vessel.

(Testimony of Milton R. Evans.)

Q. The work that you were doing was done in conjunction with [2582] Mr. Magee and Mr. Johnson, am I correct?

A. Yes, and a couple of other agents at different times.

Q. Those other agents were Department of Justice agents, is that correct?

A. Federal Bureau of Investigation.

Q. At that time you observed or, rather, in the course of that work you observed many hundreds of cases of eggs, without going into each particular ship; you observed many hundreds of cases of eggs that bore a recently-dated Department of Agriculture stamp, did you not? A. That is true.

Q. Did you at any time request the presence of any Department of Agriculture inspector to participate with you in the grading of eggs which had, according to the markings on the case, been graded by the Department of Agriculture?

A. I made no request to anybody. All I did was grade the eggs for the agents.

Q. Was there any suggestion made by you that any representative of the firm of Nye & Nissen be present at the grading of any of these eggs?

A. Suggestion by me?

Q. Yes? A. No sir.

Q. Or request by you? A. No sir.

Q. In your practice as an egg grading inspector for the Army, it is true, is it not, that where a quantity of eggs has been received by the Army and has been inspected presumably by some member of

(Testimony of Milton R. Evans.)

the Veterinary Corps, if a dispute or a question arises as to the quality of the eggs, they are inspected by [2583] two or three Veterinary Corps inspectors, isn't that correct?

A. That is not the rule, no sir. Ordinarily an inspector at destination recommends rejection of the eggs. His recommendation is taken under advisement by the procuring officer, who makes the final decision. He then notifies the vendor, or the vendor, shall I say, may request, if he so desires, a reinspection in his own defense if he has some shipping charges in addition to the cost of the eggs that makes it worth a reinspection to him. If there are no shipping charges involved ordinarily they do not request a reinspection.

Q. In the ordinary situation where a vendor of eggs has had eggs delivered to the United States Army and a dispute arises between the Army and the vendor, the vendor can request a joint inspection of those eggs and a determination of their quality even after some other agent or some other officer has reached a conclusion in respect to the eggs different than the inspection at the point of origin, isn't that right?

Mr. Pratt: If the Court please, I object to this because it relates to sales to the Army. The sales under consideration here are sales to the War Shipping Administration and have nothing to do with sales to the Army and whatever practice obtained relating to sales to the Army is irrelevant here.

(Testimony of Milton R. Evans.)

The Court: The objection is sustained.

Mr. Faulkner: Your Honor, I think I am entitled to show this, that it is the practice in the business in which he made [2581] this inspection that whereever eggs are inspected or are received by the vendee and a question arises as to quality, that the vendor is entitled to participate in determining the quality of the eggs; that is, it is not a star chamber proceeding.

The Court: The Court has ruled. The objection is sustained.

Mr. Faulkner: Exception.

Q. At no time during the period that you were inspecting these eggs on the various ships that you have referred to in your testimony did any member of the Department of Agriculture inspect any of the eggs with you?

A. Not with me, no sir.

Q. On any occasion in respect to any of the ships that you have referred to, do you know whether prior to the time that you went down to the pier whether a Department of Agriculture man had gone down to the pier and inspected the same eggs that you had inspected?

A. The only knowledge I have of the eggs with the Department of Agriculture stamp on them is that there was a stamp present.

Q. No, I mean do you know whether any Department of Agriculture men inspected any of these eggs in conjunction with the Department of

(Testimony of Milton R. Evans.)

Justice, and then you were brought in later? Do you know anything on that subject?

A. I do not.

Q. At the time you were inspecting these eggs on the various ships, the Cape Charles, Gilbert Hitchcock, Czechoslovakia Victory, Phillipa, William Coulter, Francis Parker, Cape Breton, [2585] Mission San Diego, and the James Oliver, were you determining the grade of eggs under the grade established by the United States Department of Agriculture or by the State of California Department of Agriculture?

A. I was grading them under the promulgation of standards for shell eggs of the Department of Agriculture, the United States Department of Agriculture.

Q. And in determining the grading you were using the formulas and the methods and the directions of how to determine Grade AA, Grade A, Grade B, Grade C, and other types of eggs under the rules of the Department of Agriculture?

A. That is correct.

Q. Do you know, Major, how any of those cases of eggs would grade if you applied to the cases that you examined the rules for determining the quality of eggs under the rules of the Department of Agriculture of the State of California?

A. As individual eggs or by the case?

Q. Individual eggs and cases?

A. I have some time ago read the standards for

(Testimony of Milton R. Evans.)

eggs for the State of California and to the best of my knowledge they are very similar to those of the Department of Agriculture and would be the same as I found on my inspection.

Q. It is a fact, is it not, that the weight of a Medium egg under the State of California Department of Agriculture statute is thirty-five and a fraction pounds?

A. I do not know.

Q. It is a fact, is it not, that each measurement required in [2586] respect to the air cell, a greater depth of air cell is allowed in a AA egg under the State of California rules than under the Federal Department of Agriculture rules?

A. Not to the best of my knowledge.

Q. What is the air cell of a AA egg under the United States Department of Agriculture rules?

A. One-eighth of an inch or less.

Q. Is it not a fact that a AA egg under the State of California rule is three-sixteenths of an inch?

A. I don't know.

Q. Then when you have stated that they were similar, what are the points of similarity between a grade AA egg under the Department of Agriculture rules of the United States and the Department of Agriculture rules of the State of California?

A. As I say, it was some time ago that I read the California standards and I do not remember them nearly so distinctly as I do the Department of Agriculture rules and, generally speaking, my

(Testimony of Milton R. Evans.)

memory suggests that they were the same. I may be wrong.

Q. But you do not know the weights required and you do not know the depth of the air cell required, do you?

A. I do not know that they are identical. My memory says that they were the same. As I say, I may be wrong.

Q. At all events, your examination and grading were solely based upon the United States Department of Agriculture standards?

A. That is correct, sir. [2587]

Q. For Consumer Grade eggs?

A. That is correct.

Q. Exclusively? A. Exclusively.

Mr. Faulkner: I think that is all.

Redirect Examination

Mr. Pratt: Q. Major, do you know anything about the billing, invoices of the eggs that were delivered to these several ships as to the description of the eggs in the invoices?

A. I had occasion to see a few of the invoices. I do not remember to which shipment they pertained exactly, but I saw some of the invoices that called for Fresh Processed Medium Grade AA eggs.

Q. Did any of these invoices indicate that they were being invoiced under State of California grades of eggs?

Mr. Faulkner: The invoices speak for them-

(Testimony of Milton R. Evans.)

selves, your Honor. The invoices, your Honor, the handbills are all uniform and they read——

The Court: If he knows he may answer.

A. I did not.

Mr. Pratt: Q. In regard to the Cape Charles, in cross-examination you testified, I believe, that the Number 4 case which you examined, which was a stamped case, graded A and was in weight 39 pounds and 8 ounces, which was just very slightly below the Medium egg in size and weight, is that right? A. I believe so.

Q. Now, I hand you a certificate referring to the other three [2588] cases. What was the weight of those several cases?

A. The first one was 34 pounds, 14 ounces, the second one was 33 pounds, 4 ounces, the third one was 33 pounds, 10 ounces.

Q. Two of those cases contained Peewee eggs and the other one just barely above Peewee, or rather, just barely within the Small classification, is that right?

A. That is correct.

Q. And the weight of the other three cases was what?

A. As distinguished from the average for the four?

Q. Yes.

A. Well, the first one outside of the Inedibles would have been slightly under Grade A. They would have been in Grade B. The second one outside of the Inedibles, would also have been a Grade

(Testimony of Milton R. Evans.)

B. And the third one would have been slightly under Grade A; it would have been Grade B.

Q. The whole lot of eggs determined by the candling or inspection of the four cases was what?

A. Would have been a Consumer Grade B Small.

Q. United States Consumer Grade B Small?

A. Yes sir.

Q. Now, referring to Exhibit 98, which I hand you, which is a copy of the invoice of the eggs that went onto the Cape Charles, will you examine the third item, which reads "36 cases of eggs, Meduim, Processed, AA," and I will ask you if the eggs which you examined on that ship complied with the description of eggs in the invoice of Nye & Nissen?

Mr. Faulkner: Just a moment, if your Honor please. That calls for an opinion and conclusion of the witness, and that [2589] is what the Jury is to determine in respect to these things. In other words, the invoices are presented. The property which was delivered is described by a witness. Now, it is for the Jury to determine when all the facts are before them whether it meets the description in the invoice, not the opinion and conclusion of a witness on an ultimate fact. That is why we are in court.

Mr. Pratt: I am asking him as an expert in connection with——

Mr. Faulkner: He is not an expert witness.

Mr. Pratt: ——in connection with his inspec-

(Testimony of Milton R. Evans.)

tion and examination of the eggs on the Cape Charles, whether the eggs which he examined were such as to fit the description in this invoice.

Mr. Faulkner: That is an opinion and conclusion of the witness. In other words, your Honor, the witness testifies not only in respect to this, but, we will assume, each of these cases, what he found. They have shown they were delivered at the pier. They have shown the various steps in respect to the eggs. Then the Major has inspected them or Colonel Hand. He describes what he found. Now, with the invoice and the testimony, it is for the Court sitting here with a jury to determine whether they are the same eggs. It is for the Court and the Jury in the light of the expert testimony—— [2590]

The Court: Read the question.

(Question read.)

The Court: The objection may be overruled. You may answer.

Mr. Faulkner: Exception.

The Witness: They would not fit that description as I found them at the time I inspected them, no sir.

Mr. Pratt: Q. How many grades, so far as quality is concerned, were those eggs that you examined, deficient in contrast or comparison with the eggs described in that invoice?

Mr. Faulkner: Same objection, your Honor.

The Court: The objection may be overruled. He may answer.

Mr. Faulkner: Exception.

(Testimony of Milton R. Evans.)

The Witness: A. Two letter grades so far as the requirements of the Department of Agriculture for U. S. Consumer grades of eggs are concerned.

Mr. Pratt: Q. Directing your attention to the fact that these eggs in the invoice are described as Medium, you found them to be what?

A. The average——

Mr. Faulkner: He has already asked and answered that, your Honor. The question is argumentative.

The Court: It has been answered, but I will allow the question and answer.

The Witness: A. I found them to average a Small class [2591] rather than a Medium.

Mr. Pratt: Q. And to what extent were they smaller than the Mediums described in the invoice?

Mr. Faulkner: Same objection, your Honor. In other words, all of this has been asked and answered and gone over on direct examination and cross-examination.

The Court: The objection is overruled. You may answer.

Mr. Faulkner: Exception.

The Witness: A. They would have been 3 pounds, 15 ounces on the average lighter than the requirements for Medium sized eggs.

Mr. Pratt: Q. Directing your attention to the fact that the stamp on such cases as were stamped on the Cape Charles bore the date April 27, and that your examination was on April 29, two days later; from your experience and knowledge as an expert could the eggs which you examined have

(Testimony of Milton R. Evans.)

deteriorated in two days from AA Medium to B Small?

Mr. Faulkner: If your Honor please, we object to that upon the ground it calls for the opinion and conclusion of the witness, and a proper foundation has not been laid in this: this witness has not been shown to have any knowledge of the conditions under which the eggs were kept in that period.

The Court: If he knows he may answer. The objection may be overruled.

Mr. Faulkner: Exception. [2592]

The Witness: A. If the eggs were handled properly it would not be expected that they would drop two grades in two days. It would depend entirely on the circumstances.

Mr. Pratt: Q. Could they have dropped in weight?

Mr. Faulkner: Just a minute. He has not finished, your Honor.

Mr. Pratt: Q. Had you finished your answer?

A. Essentially so, yes sir.

Q. Could they have dropped in weight in a period of two days?

Mr. Faulkner: If your Honor please, could they have done this? Could they have done that? Is that binding on these defendants? It is a subject matter of expert testimony that is not relevant in this case, what they could have done, it is what they did do.

The Court: You many answer the question. The objection is overruled.

Mr. Faulkner: Exception.

(Testimony of Milton R. Evans.)

The Witness: A. Those cases with the Peewee eggs in certainly could not have shrunk over any period of time in size. That is, the size was predetermined at the time the egg was laid. The small amount of shrinkage as determined in individual cases of Medium eggs under unusual circumstances of wind, hot weather and the like, is conceivable. A case of eggs could shrink a matter of a very few ounces over a short time, but not to the extent as indicated here. [2593]

Mr. Pratt: Q. Under what circumstances, under what conceivable circumstances could these eggs have reduced in weight or grade from AA to B?

Mr. Faulkner: May I hear that question?

The Court: Read it.

(Question read.)

Mr. Pratt: During a period of two years.

Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial, improper redirect examination.

The Court: The objection will be sustained.

Mr. Pratt: Q. Major, I direct your attention to the steamship Gilbert Hitchcock. On cross-examination Mr. Faulkner asked you to compute the average weight of these three stamped cases which you examined, your testimony having been that you examined six cases, three of them being stamped and three unstamped. You testified on cross-examination that the average weight of the three stamped cases was 39 pounds and 9 ounces. Will you now compute or have you computed the average weight of the three unstamped cases?

(Testimony of Milton R. Evans.)

A. I have computed that, yes sir.

Q. What do you find that to have been?

A. I found the average of the three unstamped cases to be 33 pounds, 13.8 ounces.

Q. So that taken collectively those three cases would classify as to size as what?

A. Smaller than the requirements for [2594] the Grade Small, commonly referred to as Peewees.

Q. Now, have you computed the average weight of the whole six cases?

Mr. Faulkner: He is going over the direct examination. He has testified to all these things on direct examination.

Mr. Pratt: No.

Mr. Faulkner: Yes, he did. He gave the figure on the bottom of the page. 36 pounds, 11 ounces. We submit that is not proper cross-examination.

Mr. Pratt: All right, if he says the average is 36 pounds, 11 ounces for the whole six, I am content with that statement.

Mr. Faulkner: I do not say that. I said he testified to that before. I do not know what they were.

Mr. Pratt: Q. Directing your attention again to this Gilbert Hitchcock and the eggs which you examined on that steamship on the first of May, 1944, I direct your attention first to the Exhibit 144, which is the invoice in evidence of those eggs as submitted by the defendants to the Government. I direct your attention to the second item on this invoice, 55 cases of eggs, Medium, Processed, AA,

(Testimony of Milton R. Evans.)

1650 eggs, and I further direct your attention to the date which you stated was on the stamp, the Department of Agriculture stamp, on such cases as were stamped, dated April 29, which is two days previous to your examination, and I will ask whether the [2595] quality of these eggs, the grade of these eggs, could have dropped under any conceivable circumstances from Grade AA Medium to the grade you gave them in your examination?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness, not binding upon the defendants, and not the basis of expert testimony: Could they have dropped?

The Court: He may answer.

The Witness: A. May I have my inspection forms? I found them to average slightly below a Grade A, which would be a Grade B, two letter grades below the grade indicated here on the invoice, and in my opinion, under the average acceptable conditions for the handling of eggs they would not drop two grades in two days, no sir.

Mr. Pratt: Q. Could the weight of these eggs have dropped from the Medium mentioned in the invoice to the Small that you found in your inspection?

A. No sir. The average weight that I determined for this lot of 36 pounds would be—it would mean that they had lost better than three pounds per case in weight, which is to me inconceivable in two days time.

Q. Now, again, so far as the Gilbert Hitchcock

(Testimony of Milton R. Evans.)

is concerned, referring to your grading certificate, you found that the three unstamped cases were not processed, did you not? A. Yes sir. [2596]

Q. The invoice on these eggs submitted by Nye & Nissen as shown by Exhibit 144 shows that they charged for 55 cases of processed eggs. Is there anything in the appearance of these eggs relating to processing that could have changed in a period of two days? A. No sir.

Q. Now, in regard to the Mission San Diego, in cross-examination—I withdraw that. It appears in connection with that inspection of the eggs on the Mission San Diego that you found quite a number of U. S. Light Dirties and U. S. Dirties. Mr. Faulkner asked you in cross-examination to define Dirties and Light Dirties, which I think you did. From your knowledge as an expert do you know what causes the dirt on eggs?

A. Well, the larger percentage of the soiled appearance of eggs is the result of fecal matter from the chicken itself, and quite frequently the straw bedding in which the egg will lay immediately after the egg is laid, sometimes that would be co-adherent to the egg with the fecal matter.

Q. Now, there were ten cases of eggs that you examined, and your certificate indicates that you checked all ten cases to determine whether or not they were processed eggs, and you found they were not processed, is that right?

A. That is correct; sir.

Q. Now, Exhibit 153, to which I direct your

(Testimony of Milton R. Evans.)

attention, describes 10 cases of eggs, Medium, Processed, AA. Is there anything that could have happened to these eggs to change the [2597] character of the surface within the period between the date of the stamp on the cases and the time you examined them that would affect this question of processing?

Mr. Faulkner: We object to that as not proper redirect examination. I have asked this witness a single question about the processing of eggs. Now we are going over the whole thing. It calls for an opinion and conclusion.

Mr. Pratt: Well, I will withdraw that question.

Q. What would have been the effect on the eggs, these Dirty eggs, that you found on this ship, the Mission San Diego, if they had been processed by dipping in mineral oil, do you know?

Mr. Faulkner: I object to that, your Honor, what would the effect have been on the eggs.

Mr. Pratt: The appearance of the egg.

Mr. Faulkner: Not proper redirect examination.

The Court: I will allow it.

Mr. Pratt: He went into the question of the Dirties.

The Court: He may answer. The objection will be overruled. He may answer.

Mr. Faulkner: Exception.

The Witness: I do not know that I understand the question clearly.

(Question read.)

A. Well, there would have been the physical

(Testimony of Milton R. Evans.)

and visual evidence of the application of mineral oil to the surface of [2598] the egg. Do you mean the effect on the soiled material?

Mr. Pratt: Q. On the dirt on the eggs?

Mr. Faulkner: We submit that is not relevant evidence and it calls for an opinion and conclusion on a matter, your Honor, not within the issues before this Court.

The Court: Counsel might indicate the purpose of the testimony.

Mr. Pratt: I will withdraw it to save time.

Q. Now, I direct your attention to the Phillipa and your examination of eggs on the Phillipa. In cross-examination you testified that these eggs graded A, is that correct?

A. As I recall, they would have been slightly under grade, which would have made them a Grade B.

Q. Slightly under grade? A. Yes.

Q. They in fact graded what?

A. Graded a Grade B Small, a letter grade of the Department of Agriculture Consumer Grade today.

Q. Major, do you know of any regulations of the War Shipping Administration which in April or May of 1944 would permit the acceptance under any circumstances of eggs of a lower grade or quality or size than those described in the purchase order or in the invoice of the vendor?

Mr. Faulkner: We object to that as not binding on the defendant, whether he knows of the regulation or not. In other words, if there is a regula-

(Testimony of Milton R. Evans.)

tion binding on the defendant, [2599] it is a law, if it is a valid regulation, and the Court could take judicial notice, and whether this gentleman knows whether there was a regulation would not bind the defendant and would not help the Government. And it is not the best evidence.

The Court: The objection will be overruled. He may answer.

Mr. Faulkner: Exception.

The Witness: A. I know of no such regulation, no sir.

Mr. Pratt: Q. At that time, namely in April or May, 1944, was there any provision or regulation of the Department of Agriculture in regard to the inspection certificates issued by inspectors of that department which permitted or provided for a change of grade, quality or sizes of eggs between the time of inspection and the time of delivery of such eggs?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial and not the best evidence, and not the subject matter of an opinion or conclusion. The regulations, if they are valid, speak for themselves.

The Court: The objection is overruled. If he knows he may answer.

Mr. Faulkner: Before he answers may I interrogate him as to his qualifications to testify on all the regulations of the Department of Agriculture?

The Court: The Court has ruled.

Mr. Faulkner: We supplement the objection

(Testimony of Milton R. Evans.)

with the [2600] objection that no foundation has been laid in this, that there is no evidence in this case that the Major has read all the regulations issued by the Department of Agriculture during the period involved.

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

The Witness: A. I know of no such regulation, no sir.

Mr. Pratt: That is all; Major. [2600-a]

Recross-Examination

Mr. Faulkner: Q. Major, you testified at the beginning of your redirect examination this morning in respect to the Cape Charles. In that particular ship you testified on your redirect examination that the eggs involved in the shipment did not meet the description in a purchase order that provided for the delivery of 36 cases of Medium Processed AA eggs, is that right?

A. I only testified as to the invoice, not the purchase orders.

Q. I am using the delivery tag. I haven't the invoice. But the quantity was 36 cases of eggs, Medium, Processed AA; that was the description that you said those eggs did not meet, is that right?

A. Yes, sir.

Q. I will ask you, Major, if in your opinion as an expert the cases of eggs marked with the Department of Agriculture stamp met the description in that invoice. A. They did not.

Q. Why?

(Testimony of Milton R. Evans.)

A. Because the one case that I examined that had the stamp on it had 73 percent Grade AA; the Department of Agriculture requires that they have 80 percent. AA eggs, 10 percent A, et cetera.

Q. You testified on your cross-examination that the Army would accept those eggs as AA's at the point of origin, did you not?

A. No, sir, that is not what I said.

Q. Doesn't your record show that in the case of eggs stamped AA that there were 84 percent A eggs? A. They do. [2601]

Q. There were no inedibles?

A. There were not.

Q. The average weight of that case and the next one was within a few ounces of 40 pounds, wasn't it?

A. Slightly under the average of those two.

Q. How much under?

A. I think the record would show the calculation. I think it would be around 39 pounds 14 ounces.

Q. The description in the invoice was Medium, AA eggs, and is it your testimony that eggs with 84 percent at the point of delivery weighing within an ounce or so of forty pounds do not meet the description of medium AA eggs at the point of origin? A. They do not.

Q. Is that you testimony? Why do they not?

A. Because to be a medium Grade AA they must be 80 percent AA or better.

Q. What were they three days before?

(Testimony of Milton R. Evans.)

A. I do not know. I would have to see the eggs three days before.

Q. So that you do not know from your examination on that waterfront what the condition of those particular eggs were three days before, do you?

A. I do not.

Q. Then you do not know that three days before, or two days, whatever the difference in the dates is, what the quality of those eggs were two days before, do you?

A. Not of these specific eggs. All I would have would be my opinion in the experience of handling eggs, and how much they would drop.

Q. Your opinion would be what?

A. I wouldn't know what they were two days before, not having seen the eggs two days before; [2602] I couldn't testify what they were.

Q. The basis of your testimony would involve in reality whether or not seven eggs out of a hundred had in the period of a couple of days under conditions with which you have no knowledge, had deteriorated in quality from an AA egg, is that right?

Mr. Pratt: I object to this, if the Court please.

Mr. Faulkner: You brought it up. There it is. 73 AA eggs.

The Court: I will allow it. Proceed. Let us get through with this witness.

A. If I had to determine that on the basis of one case, your statement would be true. But I had four cases on which to base my opinion, which

(Testimony of Milton R. Evans.)

made it considerably lower than that, and there was no question in my mind.

Mr. Faulkner: Q. Major, was there any question at all, with respect to the Cape Charles and with respect to each of these ships that you went down to see, that you observed a quantity of eggs aboard those vessels where it was obvious to you that some of the eggs had been marked by the Department of Agriculture and apparently inspected by them, and then there were eight or ten cases which were not and which were small eggs, different type eggs?

A. That was very obvious.

Q. That was quite obvious? A. Yes.

Q. Now, I am talking about the eggs that bore a Department of Agriculture stamp, and you have one there; there were 73 [2603] AA eggs in that case and the case weighed 39 pounds, and then you took another case which was stamped and it weighed 40 pounds 4 ounces. A. Yes, sir.

Q. I ask you as an expert whether you will testify under oath in this court that two days before those were not AA eggs?

A. I am unable to answer the question unless I could see the eggs two days before.

Q. That is right. Now, Major, we will take the Gilbert Hitchcock. You testified on your redirect examination this morning to the examination of six case of eggs, and you testified that some of them were stamped and some were unstamped. Now, on that ship, as well as the Cape Charles, it

(Testimony of Milton R. Evans.)

was very obvious to you that in that shipment there was a quantity of eggs that presumably had been inspected by the Department of Agriculture and a quantity of eight, nine, or ten cases, whatever it may have been—I think it said fourteen here——

A. Yes, sir.

Q. Were smaller eggs, isn't that right?

A. Yes, sir.

Q. In other words, the eggs that were in these cases that did not bear a Department of Agriculture stamp would be classified as small eggs, or they might have been an ounce under the small egg class, isn't that about correct?

A. Well, here are two of them that are four ounces each under. They were under small size, yes, sir.

Q. In other words, 34 pounds is a small egg, isn't it. [2604]

A. That is correct.

Q. So that these eggs were in the general vicinity of small eggs, isn't that right? Well, you have 34 pounds and some ounces; you have 33 pounds and some ounces. They were practically small eggs, weren't they, for all intents and purposes?

A. Not small eggs in my estimation.

Q. What was the average of the three of them?

A. It would be less than 34 pounds—let's see. 12, 24, 26——

Q. How do you get that? There is 33-12 and 34-2.

(Testimony of Milton R. Evans.)

A. I was adding the ounces to average them up.

Q. Pardon me?

A. I was adding the ounces to average them up. You see, there is 33-12, 34-2 and 33-12. The average would still be less than 34.

Q. Yes, but only in ounces, though.

A. Well, granted; it is under 34.

Q. Is it your testimony that eggs would not deteriorate in weight a matter of a few ounces in a period of four days, three days, under all conditions?

A. It depends on the circumstances. If they were held under proper handling you would not expect them to shrink that much. Even so you still have small eggs. The size of the egg did not shrink.

Q. These are practically small eggs, aren't they?

A. Well, they are peewees in my estimation.

Q. Would you, from the naked eye, be able as an expert to take a case of eggs that averaged 33 pounds and, we will say, 12 or 14 ounces, and state that they were "Peewees" when you [2605] were contrasting them with a case of eggs weighing 34 pounds?

A. That would be very difficult, yes.

Q. It would be impossible, wouldn't it, Major?

A. I wouldn't say impossible, but difficult.

Q. In other words, from the inspection of 360 eggs that have 2 ounces to divide them between that case and another by the naked eye, do you

(Testimony of Milton R. Evans.)

think it would be possible to tell which was a "Pee-wee" and which was a Small?

A. It would be extremely difficult, Mr. Faulkner.

Q. That is as far as you will go?

A. Yes, sir.

Q. Two ounces on 360 eggs would be how much for each egg?

A. There would be enough exceptionally small eggs in that case to make one suspicious that the eggs would not have weighed 34 pounds, and I for one would weigh the eggs rather than guess from my opinion. The scales would tell very quickly whether it did or did not weigh 34 pounds.

Q. There is no question from the weights which your have recorded there that those weights will all meet the individual weight requirement for a small egg? A. I wouldn't say that.

Q. What is the requirement?

A. You asked me what they would have been, what they would be two days ago. I don't know. Today all I know is they do not make 34 pounds.

Q. On the day that you weighed them, is there any question in your mind that the case that weighed 33 pounds 12 ounces was made up of eggs which would break the scale for a small [2606] egg when you were weighing individual eggs?

A. There were some eggs in some of these cases which would not have broken the scale for a 15-ounce size.

Q. When you set the scale for a small egg, what do you set it at?

(Testimony of Milton R. Evans.)

A. I believe the test weight is 1.66; I believe that is the test weight for that scale.

Q. 1.66 for a small egg?

A. For a small egg?

Q. Yes.

A. 15 divided by 12. Where is my pencil and paper? Mr. Houck calculated that at 1.25 for us.

Q. What? A. He says 1.25.

Q. Don't rely on what anyone tells you over there. Work it out, if you will.

A. All right, sir, I will be glad to. Mr. Houck is a brilliant mathematician. That is 1.25.

Q. Multiply that by 360 eggs and you have the weight of the box of eggs weighed on a hand scale. Will you give me that figure, please?

A. Now we have 450 ounces, is that right?

Q. That is right. A. Go on from here?

Q. Yes.

A. I think I have that calculated in my folder here, if it will save any time. It is beside you, Mr. Faulkner.

Mr. Faulkner: Q. What is the weight of the case of eggs when you hand-weigh it?

A. I think I have it converted to pounds here. On the basis of this 15 ounces per dozen for an individual egg, that would be 28 pounds 2 ounces.

Q. There isn't any question that each one of those cases of eggs which you have classified here sometimes as small and [2607] sometimes as "Peewees," if weighed by the hand scale commonly used by an egg candler, that the weight of those eggs is

(Testimony of Milton R. Evans.)

higher than the weight that you would get in that fashion, isn't that correct?

A. Calculating it this way, of which I know of no provision for calculating it that way, your statement is substantially true.

Q. You say there is no provision for calculating it that way?

A. Not to the best of my knowledge.

Q. Do you know the provisions of any regulation that requires an inspector to determine the weight of eggs in a particular fashion under the rules and regulations of the Department of Agriculture?

A. It is my understanding that their requirements for weighing a case of eggs is the same as I have always used, and that is the basis of weighing a half a case of eggs with the flats and fillers.

Q. Have you ever read a regulation so providing, issued by the Department of Agriculture, that was in effect in the early part of 1944, in the first part of 1944? A. It seems to me that I have.

Q. Where?

A. At the time we were receiving our basic instruction in this work. It seems to me that would be in the latter part of 1942.

Q. In 1942? A. Yes, sir.

Q. I am speaking of 1944.

A. Well, beyond the time I mentioned I couldn't state that I had read it: My memory is that [2608] I did.

Q. We will get along with the next ship. The

(Testimony of Milton R. Evans.)

next ship you referred to was the Mission San Diego. That involved 10 cases of eggs, none of which bore an Agriculture stamp.

A. Mission San Diego?

Q. Mission San Diego. A. Yes, sir.

Q. Now, in relation to that, the average weight of those cases was 38 pounds 13 ounces, is that correct? Am I correct in that?

A. Yes, sir. 38-13.

Q. What? A. 38-13 ounces.

Q. That is a calculation you have heretofore made? A. That is on the page here, yes.

Q. That is what I mean, and that is what your testimony was based on, that calculation?

A. Yes, sir.

Q. At the time you examined those eggs there were only 10 cases of eggs aboard that vessel, were there not? A. That is right.

Q. And none of the cases bore a Department of Agriculture stamp? A. No.

Q. Now, you reached an opinion that the eggs were not processed? A. Yes, sir.

Q. Did you put them through any test to determine that? A. I did not.

Q. You based that on sight and touch, do you?

A. Yes, sir.

Q. Now, what do you look for when you are looking at an egg to [2609] determine whether it is processed? What is there on the egg that indicates to you as an expert that an egg is or is not processed?

(Testimony of Milton R. Evans.)

A. Well, as near as I can describe it is most everyone understands what an oil surface appears to be, and an egg has essentially the same appearance. It has a slight sheen to it. There is an oily film over it. You can feel the oil if it has at all recently been processed, particularly if there is any moisture at all. You get moisture on your finger that you can determine on palpation. Eggs which have been processed and are still in the containers in which they were originally put will have around the four sides of the filler an oil spot where it has touched there, the flat below and above it.

Q. That is assuming the eggs came out of the processing plant and remained in the same flats and fillers as they were when processed? A. Yes.

Q. So if you had a case of natural eggs that were in a case had these oil marks on, do you think you would be able to tell whether each individual eggs was processed, or not, Major?

A. I could very readily reach an opinion so far as a case was concerned, a case of eggs, whether it was processed.

Q. After you had reached the opinion you would not know whether you were right, or not, would you?

A. I rarely express an opinion unless I think I am right.

Q. Major, in your knowledge of the egg business isn't it the consensus of opinion—people who are experts in the business, [2610] if you took two, five, or six individual eggs, that it is impossible to tell whether they have been processed, or not?

(Testimony of Milton R. Evans.)

A. No, sir, not under the consideration——

Q. With the naked eye?

A. No, sir, particularly—speaking from my experience, primarily with the Army, we define a freshly-processed egg as one that has been processed at least within thirty days. There would be no question in my mind that I would determine an egg which had been processed within thirty days; I could make a statement "Yes" or "No" to it.

Q. But isn't it a fact that they have attempted to develop various means or devices to determine whether an egg has been processed, and that all of them, these mechanical devices, have failed?

A. No, sir, I could not make that statement.

Q. Hasn't the water test failed?

A. I couldn't say it was a failure. Whether it is a 100 per cent or not I couldn't state.

Q. And hasn't the lampblack test failed?

A. You mean a 100 per cent failure on these?

Q. No, not 100 per cent. I mean after you are unable to tell from the naked eye and feeling the egg, after you apply a water test you still do not know; after you apply the lampblack test you still do not know; and after certain circumstances when you apply the ring test you still do not know whether the eggs has been processed, or not, isn't that generally so?

A. If an egg has been processed at all recently I would say those tests would tell very definitely whether it was a [2611] processed egg.

Q. In other words, then, would your testiomny

(Testimony of Milton R. Evans.)

be that you could, as an expert, tell whether an egg had been recently processed but might have your doubts or misgivings if an egg had been processed at a considerably longer time? Would that be about right?

A. That would be my testimony, yes.

Q. And it would be that type of background which was the subject matter of your indicating in court here that some of these eggs were not processed, isn't that right?

A. On the basis of the fact that a freshly processed egg would be considered under 30 days, there would be no question in my mind as to whether they were or were not processed. These are fresh eggs here, presumably.

Q. Would it be a fair statement that your testimony then with respect to processing, you express the opinion you are certain these eggs were not processed within thirty days?

A. That is my testimony, yes, sir.

The Court: Step down.

The Witness: I wonder if I could express my gratitude to you and the jury for the consideration you have given me Friday evening.

The Court: Ohio State has not produced many men like you. They can be proud of you. And the Army can.

(Recess.) [2612].

The Court: I thought you were through?

Mr. Faulkner: I have one more ship.

(Testimony of Milton R. Evans.)

Q. You testified concerning the Gilbert Hitchcock——

The Court: Before we go any further, I paid this young man a compliment here. That has no relation whatever with his testimony. I wouldn't want to mislead the jury by indicating in any manner on the weight of his testimony, or in any manner affecting the facts. That is a matter wholly for the jurors, themselves. Proceed.

Recross Examination (Resumed)

Mr. Faulkner: Q. In the redirect examination by Mr. Pratt, he called your attention to the Gilbert Hitchcock. The Gilbert Hitchcock, I think that was the situation, was it not, Major, where it was obvious to you that there was—I want to be sure I have the right one there. I think I referred to the Gilbert Hitchcock, did I not, Major, before the recess? A. Yes.

Q. Would you look at the SS Phillipa?

A. Yes.

Q. That involved, did it not, a situation where six or seven cases were examined and it was apparent to you that that quantity of the entire lot was made up of some eggs that were stamped and some smaller eggs, am I correct?

A. There were some stamped and some unstamped eggs.

Q. Do you recall how many eggs were involved?

A. There were 65 cases. [2613]

Q. 65 cases. That's right. A. Yes.

Q. How many were eggs that you call small eggs?

(Testimony of Milton R. Evans.)

A. I counted six cases here and weighed seven; three that I weighed here out of this group which were obviously underweight eggs, and four of them approximately, I believe, within the weight for medium eggs. There were 15 unstamped cases.

Q. The cases that were stamped on the Phillipa all weighed the weight required, the average weight was the weight required of the minimum eggs and a little over, was it not? A. Yes.

Q. How much out of seven?

A. Four out of seven.

Q. The others, they were a 34-pound case, and a 30-pound case, and I don't find the third.

A. It is at the bottom, the weight there.

Q. 33 pounds? A. Yes.

Q. And 12 ounces. So the eggs, the cases of small eggs there, the three cases that you weighed weighed 4 ounces less than the weight of small eggs, am I correct? A. This last case?

Q. Yes. A. Yes.

Q. They averaged less than the weight of the small eggs?

A. Yes, the average, but one was 33 pounds 12 ounces. The weight established by the Department of Agriculture is the minimum weight per case. That is not established as an average weight. It is described as a minimum weight per case.

Q. 34 pounds? A. Yes.

Q. But the average weight of the three cases exceeded 34 pounds. [261½]

(Testimony of Milton R. Evans.)

A. By the 3 ounces, yes.

Q. From your examination, the date you examined them, May 3rd, having in mind the eggs were inspected on the 27th of April, a period of eight days, there would be no question in your mind, would there, and nothing that you observed in respect to those eggs at the time you inspected them to indicate to you that they did not meet the requirement of 34 pounds on the date of April 27th if they had been tendered for inspection on that date?

A. That would depend entirely upon the conditions and the environs under which those eggs were held during that period. There is no question that the two that weighed 34 pounds, they must have weighed that previously. As to the 33 pounds 12 ounces, I would think that case held as it may have been would have shrunk 4 ounces.

Q. Do you think it would reduce 4 ounces in a period of 21 days?

A. It depends entirely on the situation, the condition of those eggs during that time.

Q. What is the maximum reduction in weight as you have observed in the handling of eggs in a period of one week, what is the maximum reduction of any of the eggs which you have observed?

A. In that regard, my observation has been based on the shrinkage in the eggs over a longer period of time; in other words, even longer periods of time you can detect visually a practical amount of shrinkage in eggs in storage around the air cell

(Testimony of Milton R. Evans.)

when I have looked at them a period of a [2615] month or months after, and there has been some occurrences where after at least two months I could still detect no visual change which would indicate principally that those eggs are processed. In an instance where the eggs are stacked at the wharf and the wind was blowing, they would shrink more rapidly. I would have to know the environs, the condition of those eggs.

Q. You have never followed eggs then except in a case where you were directed and you were checking and doing research into the shrinkage in icehouse storage? A. That is correct.

Q. You have never followed the change in character and quantity of an egg that was merely taken, from Petaluma, for instance, to San Francisco?

A. As far as actual weighing, no; just the quantity change, which would be a part of that.

Q. The eggs that were inspected by the Department of Agriculture and that bore their stamp, I think you testified as to those cases they were all over the 40 pounds. We covered the grades they were on your direct examination, so I think that is all.

The Court: Now, you will give us the ages of those three youngsters and we will let you go.

A. That is embarrassing, in a way, sir: 4, 5, and 6.

The Court: You have every reason in the world to be happy. Step down.

The Witness: Thank you. [2616]

E. HEWITT MAGEE,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name?

A. E. Hewitt Magee.

Direct Examination

Mr. Pratt: Q. Mr. Magee, I believe you are a special agent of the Federal Bureau of Investigation, are you not? A. Yes, I am.

Mr. Faulkner: If you are going to call the major back he is the same as any other witness——

Mr. Pratt: I am not anticipating, but I might call Major Evans. I should like to have the court's permission to let him stay in the court room.

The Court: Under the law, he is entitled to that objection. Do you know any reason why you should call him?

Mr. Pratt: Not at the present time, I don't.

Mr. Faulkner: I want to permit him to remain as a courtesy.

The Court: I think he had better leave.

Mr. Pratt: Q. How long have you been a special agent of the Federal Bureau of Investigation?

A. Since January, 1942.

Q. You were in the Bureau previous to that time, were you not? A. Yes, sir.

Q. In what capacity?

A. I was a fingerprint expert at Washington.

Q. Then you graduated from that to being a special agent? [2617]

A. You might call it that.

(Testimony of E. Hewitt Magee.)

Q. In connection with the matter on trial here relating to the corporation Nye & Nissen and the individuals who are charged in the indictment, when did you first have anything to do with the investigation of this matter?

Mr. Faulkner: We object to that as hearsay, and as incompetent, irrelevant and immaterial.

The Court: He may answer. I will allow it as a preliminary question.

Mr. Faulkner: Exception.

The Witness: A. To the best of my knowledge, I personally did some active work in that case I believe in March of 1944.

Mr. Pratt: Q. When did you first make the acquaintance of Mr. Nystrom, who testified here?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, and hearsay as to the defendants. We are not bound by when he contacted witnesses whom he brought in. That does not bind us.

Mr. Pratt: The question was brought up in connection with the cross-examination of the witness Nystrom.

Mr. Faulkner: It is not part of the Government's case if we developed a fact——

The Court: In what way was it brought up?

Mr. Pratt: In cross examination of the witness Nystrom he was asked when he first was in contact with the FBI. I [2618] should like to put in the testimony of this witness as to when it occurred.

Mr. Faulkner: When I asked him that they are

(Testimony of E. Hewitt Magee.)

bound by his answer; they cannot change it. It is not part of their case in chief. They can't impeach their own witness—if Mr. Nystrom testified falsely and they are seeking to lay a foundation to impeach him——

The Court: Read the question.

(Question read.)

The Court: He may answer.

The Witness: A. I first met Mr. Nystrom on a Friday or Saturday in April, 1944, which I believe would make it the 21st or 22nd of April.

Mr. Faulkner: I submit, your Honor, that we are not bound by the answer, and it is not a part of the proof to establish the offense.

The Court: I will allow it as a preliminary question.

Mr. Faulkner: Exception.

Mr. Pratt: Q. During the course of your investigation of this case did you have occasion to visit any of the ships in the harbor here of San Francisco?

A. Yes, I did. I visited a number of different ships.

Q. I direct your attention to a visit on the steamship John Muir; do you recall that incident?

A. I recall being on the John Muir. [2619]

Q. Whom did you accompany at that time?

A. I was with Colonel Hand.

Q. Where was the ship?

A. Well, I have my original notes on that vessel. It was on the San Francisco waterfront. I

(Testimony of E. Hewitt Magee.)

am not sure of the exact number of the pier without referring to the notes.

Q. Will you refer to the notes that you made contemporaneously?

Mr. Faulkner: May I see the notes, your Honor? You are going to have the witness refresh his recollection?

The Witness: Yes.

Mr. Pratt: Yes.

Mr. Faulkner: May I ask him a question, your Honor, first?

The Court: Yes.

Mr. Faulkner: Q. Mr. Magee, you have here three pieces of paper. Are those notes that were made at the time you were on the John Muir?

A. Yes, they are. They were made right on the vessel, except in some of the other ships where I made them immediately after being on the ship.

Q. Are these notes part of a book that you had with you? A. They were a notebook.

Q. Well, I want the book.

A. The book has been destroyed. The notes are torn out immediately after making them.

Q. You destroyed the book?

A. Yes, the book has been used up. I threw the cover away.

Q. Is this a looseleaf book? A. No. [2620]

Q. Isn't it your practice to make notes in a book which you preserve?

A. Not necessarily. I prefer this method.

(Testimony of E. Hewitt, Magee.)

Q. Aren't these notes that you make for the purpose of testifying at this trial?

A. They were notes made at the time I was on the vessel. I saved them for that purpose in case there would be a trial, so I would have the notes to use, but they were my original investigation notes.

Q. They were part of a book. Will you describe the book?

A. The book was an ordinary stenographic notebook of which we have a supply in the office, and which I help myself to when I need more paper.

Q. You made notes on the investigation in that book? A. Yes.

Q. Then you took out the notes relating to the Nye & Nissen case and destroyed the book?

A. No. As I fill the book up, fill up the individual pages, I would tear them out and keep them separately for the purpose of referring to them, and for the purpose of keeping a permanent record of our office.

Mr. Faulkner: That is all.

Mr. Prat: Q. In connection with your visit——

Mr. Faulkner: May the notes be marked for identification, please, a defendants' exhibit?

(The documents were marked Defendants' Exhibit BH for Identification.)

Mr. Pratt: Q. At the time you visited that ship with Colonel Haid, what date was it?

A. That was on April 24, 1944. [2621]

Q. Where was the ship?

(Testimony of E. Hewitt Magee.)

A. The ship was at Berth B, the Naval Supply Depot; that is in Oakland.

Q. At the time you visited that ship did you have available to you or did you secure an invoice from the firm of Nye & Nissen which included products, including eggs?

A. Well, at the time we visited the vessel—these notes don't indicate anything concerning an invoice—but I am quite certain that the steward on the ship had one of the copies available in his office which I requested to look at.

Q. I direct your attention to this paper, which is Exhibit 65 in evidence; I ask you if you can identify this as a copy of the invoice which you examined at that time.

A. That appears to be one of the copies of an invoice that was at that time in possession of the steward on the vessel.

Q. How many cases of eggs did you find there on this vessel?

A. There were 48 cases of eggs on the vessel, all of them having a Nye & Nissen "Biddy" label attached.

Q. What do you mean by a "Biddy" label?

A. That is the green-colored label with the picture of a hen on it, and the words "Biddy Eggs" on the label.

Q. Was there anything on the label to indicate the size of the eggs?

A. Nothing that I observed on the cases which had the stamp "Biddy Eggs" labels on, but there

(Testimony of E. Hewitt Magee.)

was no marking other than the label itself, on the case.

Q. What color was the label?

A. The color of the label was green. [2622]

Q. You say you found 38 cases of eggs?

A. Yes, I did.

Q. Where were they?

A. At the time we went aboard the vessel they were in the chill box.

Q. Did you observe whether or not any of these cases of eggs bore a Department of Agriculture inspection stamp?

A. Yes, I did. 38 of the eggs had either marked on the label or the wood box itself, "U. S. Department of Agriculture Inspection Stamps" which stated on the top of it that the eggs were U. S. Department of Agriculture Grade AA.

Q. Did you make a note of the date on that stamp?

A. Yes, I did. The date included in the stamp was April 18, 1944.

Q. I direct your attention to Exhibit No. 68, which is a "Biddy Egg" label, and I ask you if you can identify that label.

A. Yes, I can. This is the label that I took from one of the cases in that lot. My name and the date was affixed to the label at the time I took it off.

Mr. Faulkner: Which one is that?

The Court: Exhibit what?

Mr. Pratt: This is Exhibit 68.

Q. I direct attention particularly to the Depart-

(Testimony of E. Hewitt Magee.)

ment of Agriculture stamp which appears on this exhibit No. 68; I will ask you whether that stamp is identical with all the others that were stamped.

A. That stamp is identical with the stamp on 38 of the cases. They all appeared to be so stamped.

Q. The date on the stamp was what?

A. April 18, 1944, on [2623] this record.

Q. This is what?

A. That appears to be April 18 also. My notes say they all had the date on.

Q. I observe that this label which you took off one of these cases at the time says 30 dozen medium Biddy Eggs carefully selected and packed by Nye & Nissen, Inc., General Offices, San Francisco."

A. That's right.

Q. In addition to the 38 cases which you say were stamped with the Department of Agriculture stamp, there were certain other cases that had no stamps, were there?

A. Yes, sir, there were. I observed 10 cases out of the total of 48 cases that bore no agriculture stamp and in addition these labels bore a large purple letter "P" placed on the label.

Q. I direct your attention to Exhibit 67, another "Biddy" egg label, and ask if you can identify that.

A. This is one of the other types of labels bearing the "P" that I took from the box on that vessel. It has my name and the date marked on the label.

Q. The letter "P" you refer to is the purple

(Testimony of E. Hewitt Magee.)

"P" that is here in the upper left-hand corner of this label?

A. Yes, it is; that is the same type of "P" that was on the ten cases.

Q. So the labels on the unstamped cases were all identical with the label which you removed, which is Exhibit 67? A. Yes.

Q. That also has at the top "30 Dozen Medium" and below "Carefully [2624] selected and packed by Nye & Nissen, Inc."? A. It does.

Q. What did Colonel Hand do, if you observed, in connection with the eggs on that vessel?

A. Colonel Hand made an examination of certain of the eggs on that vessel by looking at the eggs and by candling them with a candling light, in which examination I helped. I was standing beside him. I have a note here as to the grades he determined those eggs to be.

Q. Did you candle any of those eggs, yourself?

A. No, I did not.

Q. Do you know anything about candling eggs?

A. Only as an observer.

Q. Where was the candling done on the ship?

A. The eggs were taken from the chill box and, to the best of my knowledge, I believe in this particular vessel we took them into the steward's cabin, although I am not sure; some vessels we took them to the steward's cabin and on others we used the laundry room.

Q. Colonel Hand had his own candling device, did he?

(Testimony of E. Hewitt Magee.)

A. He had his candling device and I believe an egg scales with him.

Q. Besides candling eggs in certain of the cases, or from certain of the cases, he also weighed some of the eggs, did he?

Mr. Faulkner: We submit it is all leading. He just asks a question, one after another, that can be answered "Yes." "What did Colonel Hand do?"

Mr. Pratt: I will reframe the question. What did the [2625] Colonel do?

A. The Colonel candled many of the eggs from that lot, and also used the egg scales and individually weighed certain of those eggs that he was candling.

Q. Do you know how many cases were opened at that place where the candling was done?

A. I don't know exactly. I believe we carried about five or six cases, although I have no record of the exact number taken up on that particular vessel.

Q. In weighing the eggs, what did Colonel Hand do?

A. Colonel Hand, as I recall, would place certain of the individual eggs on his own scales which he had previously set to balance the different sizes of eggs.

Q. What else did he do on that occasion?

A. Well, on that particular occasion I interviewed certain members of the crew.

Q. Was there anything else you did?

(Testimony of E. Hewitt Magee.)

A. I can't recall off-hand. We completed the examination of the eggs and left the vessel.

Q. How long were you there?

A. We were there approximately two or two and a half hours, I believe.

Q. What time of day was it, do you recall that?

A. I believe we went on the John Muir, if my memory serves me right, sometime in the morning of the 24th of April, 1944.

Q. Have you recounted all that occurred as far as you recall, or as far as you can tell from refreshing your recollection from your notes in regard to the visit to the John Muir?

A. Well, I recall further that we examined the chill box to [2626] see if there were any additional eggs on board the vessel and found there was a partly opened case.

Q. You mean a case that had been opened and was partly full?

A. Partly full. That was left there from some previous purchase but we look at the eggs that had arrived just before we came on that vessel.

Q. You found 48 cases of eggs here, as you have described? A. Yes, I did.

Q. Do you recall a visit to the steamship Josiah Royce? A. Yes, I do.

Q. Have you some notes with which you could refresh your recollection as to those?

A. Well, on the Josiah Royce I have notes on that particular vessel.

(Testimony of E. Hewitt Magee.)

Q. Do you recall when you visited the Josiah Royce, when that visit to the Royce occurred?

A. Yes; we were on the Josiah Royce on April 24, 1914.

Q. Was that the same day you were on the Muir?

A. No. I beg your pardon, it was April 25th. I can recall that because it was one day previous to the time were on the Cape Pillar, which was April 26.

Q. On the Royce, with whom did you go?

A. I was with Colonel Hand.

Q. Where was the ship?

A. That was also in Oakland, at the pier at Camp Knight.

Q. Do you know what time of day it was you went on the Royce? [2627]

A. I believe were were on the Royce in the late afternoon or early evening.

Q. What did you find on that ship as far as eggs are concerned?

A. We went aboard that vessel and examined the eggs that had been received from Nye & Nissen and Colonel Hand made an examination of these eggs by candling the eggs and by weighing certain of the individual eggs.

Q. Do you recall how many cases of eggs with the Nye & Nissen label on you found on this ship?

A. I am unable to recall the exact number. It was the—it was 10 less, I believe, that the invoice

(Testimony of E. Hewitt Magee.)

that was shown to me at the time we were on the vessel.

Q. You saw the invoice on the ship, did you, the invoice from Nye & Nissen, or a copy of it?

A. Yes, I did. The steward had a copy of the invoice.

Q. I show you a paper which is Exhibit 61 in evidence, and I ask you if you can identify this as a paper which you saw, or a copy of it?

A. This appears to be similar to the invoice that the steward on the vessel had in his possession at the time we were aboard.

Q. How many cases of eggs are mentioned in that invoice?

A. This invoice calls for 60 cases of large AA eggs.

Q. How many cases of eggs did you see on that ship?

A. In the chill box there were ten cases less than is called for by that invoice, which would make 50 cases that were [2628] on the vessel, itself.

Mr. Faulkner: I am sure that is the wrong invoice.

Mr. Pratt: You are?

Mr. Faulkner: Yes. The invoice that he saw was for medium eggs. Isn't this the ship where the change was made?

Mr. Pratt: I think it is.

Q. Do you recall the description of eggs in the invoice that you saw?

A. Well, I am unable to remember the exact

(Testimony of E. Hewitt Magee.)

description. I know there were ten cases less in the chill box than the invoice that was in the possession of the steward of this ship.

Q. As to these 50 cases of eggs you saw, they were in the chill-box of the Josiah Royce?

A. That is correct.

Q. You say that Colonel Hand inspected certain ones of these 50 cases? A. Yes, he did.

Q. How did he do it, and where on the ship?

A. He had his scales and his candling-light with him, and we took a certain number of cases from the chill box and took them to some part of the ship where he would have a dark room. Now, it was either again in the steward's cabin or in the laundry or storeroom adjoining that chill box.

Q. Do you remember how many of these cases he examined by candling?

A. To the best of my recollection, he looked at, I believe, five or six of these cases; possibly more.

Q. What else did he do?

A. He observed in my company the 50 cases in the chill box, and we looked at the labels. We [2629] looked at the inspection stamps on all of these cases.

Q. Did you see inspection stamps on them?

A. As far as I can recall, I believe these 50 cases had inspection stamps of the U. S. Department of Agriculture on the cases.

Q. You don't recall the date on the inspection stamp on these 50 cases?

(Testimony of E. Hewitt Magee.)

A. No, I do not recall that from memory, but I believe Colonel Hand jotted that on his inspection sheet.

Q. At that same time did you find any other eggs, any other cases of eggs, either on the boat or on the pier?

A. There were ten additional cases of eggs besides on the vessel.

Q. How many more?

A. As far as I can recall again from memory those ten cases had Nye & Nissen labels on them, but I don't believe they had any Department of Agriculture inspection stamp on.

Q. Did you examine any of the eggs in those ten cases?

A. I personally did not examine any of the eggs. Colonel Hand looked at some of the eggs and pulled the tops off some of the cases, but I am unable to recall whether he candled any of those eggs or not that were on the pier.

Q. Did he look at any of those eggs?

A. Yes. I observed two or three cases with the tops off.

Q. Was there anything, from your observation, which you remember now?

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness. [2630]

Mr. Pratt: Well, I am not calling for his opinion, I am calling for his observation.

Mr. Faulkner: He said he saw the cases and

(Testimony of E. Hewitt Magee.)

the eggs in them. Now you want him to tell about them, and we object to that.

Mr. Pratt: I am asking what he observed as to those eggs that he saw on the pier.

The Court: He may answer.

Mr. Faulkner: Exception.

The Witness: I observed two or three cases that had the tops off looking extremely small, they were similar in appearance to Smail eggs.

Mr. Faulkner: He told the court he was not asking the witness to express an opinion. That is an opinion. He is not qualified to testify what Smail eggs are.

The Court: Again it goes to the weight of the testimony.

Mr. Faulkner: The matter of small eggs is described by the Department of Agriculture.

The Court: You may cross-examine on that. The Court will allow it.

Mr. Faulkner: I except to a ruling like that; and I except to counsel asking the question and stating to the court he does not want an opinion when he knows very well he does.

Mr. Pratt: I resent that. I asked for his observation.

The Court: Proceed.

Mr. Faulkner: Exception. [263]

Mr. Pratt: Q. Is there anything at all that you recall in connection with your visit to the Josiah Royce on that occasion?

A. Well, I do recall that the eggs, certain of

(Testimony of E. Hewitt Magee.)

the eggs were exchanged. Of course, I did not see——

Q. While you were there?

A. No, that did not happen while I was there.

Q. Were you there on that pier when any of the eggs arrived by truck?

A. No, sir. We came after, shortly after they had arrived.

Q. You have already stated that the next day, namely, April 26th, you visited the steamship Cape Pillar. A. Yes, I did.

Q. Did you make any notes in connection with your visit on the Cape Pillar?

A. Yes, I did. I made notes at the time I was on the vessel.

Q. When was it—you say April 26th; at what time?

A. April 26, 1944.

Q. What time of day?

A. Probably in the morning, around ten o'clock.

Q. Do your notes disclose whether you were there in the morning or the afternoon, or is that your *recollection*?

Mr. Faulkner: May I see the notes?

The Witness: That is my recollection. I didn't put the time of the day on the notes.

Mr. Faulkner: Q. Were these made at the same time as your visit to the Cape Pillar?

A. Yes, they were. [2632]

Q. Right on the dock?

A. Right on the vessel.

(Testimony of E. Hewitt Magee.)

Q. Right on the vessel? A. Yes.

Mr. Faulkner: May these be marked for identification, your Honor?

(The documents were marked Defendants' Exhibit B1 for Identification.)

Mr. Pratt: Q. Where was this ship?

A. I think it is Pier 34. The vessel was at Pier 34 in San Francisco.

Q. You were with Colonel Hand?

A. Yes, I was.

Q. When you got there what did you find as far as eggs are concerned?

A. Well, on this vessel there was a total of 45 cases of eggs in the chill box, and all of these bearing Nye & Nissen green "Biddy Eggs" label, 35 of the cases I observed were stamped with a stamp appearing to be that of the U. S. Department of Agriculture, which gave the grade as AA, and the date of the inspection of April 24, 1944.

The Court: It is now twelve o'clock. We will take a recess until two o'clock.

(A recess was taken until two o'clock p.m.) [2633]

Afternoon Session, March 12, 1945, 2:00 p.m.

E. HEWITT MAGEE,

recalled:

Direct Examination (resumed)

Mr. Pratt: Q. Mr. Magee, at the time court adjourned for the noon recess I was interrogating

(Testimony of E. Hewitt Magee.)

you about the visit you made to the Cape Pillar on April 26th. Have you your notes?

A. Yes, I do.

Mr. Faulkner: Which ship is that?

Mr. Pratt: Cape Pillar.

Q. On this ship you found, I believe you said, 45 cases of eggs. A. Yes, I did.

Q. Where were they?

A. They were in the chill box, on board the vessel.

Mr. Pratt: May I have Exhibit 57?

Mr. Faulkner: Has that memoradum been marked for identification?

Mr. Hippelli: Yes.

Mr. Pratt: Q. When you were on the ship did you see the invoice or copy of the invoice?

A. Yes, I did. The ship's steward had a copy; the chief steward of the vessel.

Q. I direct your attention to Exhibit 57 in evidence, and ask you if you can identify that as a copy of the invoice you saw on the ship?

A. Yes, this is the copy.

Q. You say you found 45 cases of eggs in the chill box. Did [2634] you observe the markings on these cases of eggs? A. Yes, I did.

Q. How were they marked?

A. 35 of there cases were marked with inspection stamps appearing to be of the U. S. Department of Agriculture, stating that the eggs would grade AA, and giving the date in the stamp of April 24, 1944; 10 cases out of this lot of 45 cases

(Testimony of E. Hewitt Magee.)

bore no inspection stamp of any description on the labels of the boxes, themselves.

Mr. Faulkner: May I interrupt, your Honor? The witness has already used a memorandum that has been introduced before. May I have that in the possession of the clerk?

The Court: That is, they were marked for identification?

Mr. Faulkner: Yes, your Honor. One more, Mr. Magee.

The Witness: Well, I am using this one. This is the Cape Pillar. Was there any other one?

Mr. Faulkner: I though there were two.

Mr. Pratt: The John Muir.

The Witness: He has the John Muir now.

Mr. Pratt: He didn't have any notes on the Josiah Royce, Mr. Faulkner.

Mr. Faulkner: Oh, all right.

Mr. Pratt: Q. I will direct your attention to Exhibit 45 in evidence, a "Biddy" egg label, and ask you if you can identfy that label.

A. Yes, that is one of the labels I took off a box which was initialed and dated by myself at the time.

Q. That is a label off a case that had no stamp of the Department [2636] of Agriculture?

A. That is correct, and one of the 10 labels which bore no stamp, but it had a large purple "P" on it.

Q. I call your attention also to Exhibit 48 and ask if you can identify that label.

(Testimony of E. Hewitt Magee.)

A. That is one of the labels taken from the Cape Pillar, which is also initiated by me and dated by me. That label is one of the 35 that bore the stamp of the Department of Agriculture.

Q. The stamp is entitled, "U. S. Department of Agriculture, Government Graded U. S. Grade AA" with the stamp date, "April 24, 1944." You say there were 35 stamped cases and 10 without any stamps? A. That is correct.

Q. Colonel Hand was with you, and did he make some inspection by candling some of the eggs?

A. Yes, he did. He candled eggs from a number of the cases, some of the cases without stamps and some of the cases that had stamps, and kept a record of his findings.

Q. Did you assist him in that candling in any way?

A. Well, I observed him candling the eggs, and I helped him lift some of the cases from the chill box up to the place where he was making his inspection. I, however, did not do any of the actual candling or weighing of those eggs.

Q. Did you examine any of the cases of eggs that were not stamped?

A. I examined them and saw that they had no inspection stamps on that, but they bore the purple "P" on the label. [2636] Colonel Hand as far as I can recall, checked a representative sample of this lot of cases and candled some of the eggs from those unmarked cases.

(Testimony of E. Hewitt Magee.)

Q. Did you lift the covers off any of the cases that were not stamped?

A. Yes. I observed Colonel Hand opening these cases. I looked at the eggs in them.

Q. How many cases did you look at of the unstamped cases?

A. As far as I can recall, I looked at about three of the ten cases that were unmarked.

Q. Were any eggs removed from any of those unstamped cases?

A. I believe that we took several out of the cases, just picked some off the top layers and brought them with us off the vessel.

Q. I show you this box of eggs, Exhibit 59 in evidence, being nine eggs in this box. Can you identify those eggs?

A. Well, the eggs we took from the Cape Pillar had the name of the ship written on them, and are initialed and dated by myself.

Q. How many of those eggs came off the Cape Pillar?

A. All the eggs in this box have the name "Cape Pillar", the date, and my initials; that is 9 of these eggs. All of the eggs were taken by myself and Colonel Hand from that vessel.

Q. They were from the unmarked cases?

A. I am quite sure they were from the unstamped cases.

Mr. Pratt: I should like to pass this box among the members of the jury, your Honor. [2536-a]

(Testimony of E. Hewitt Magee.)

Mr. Faulkner: It has already been passed, your Honor.

Mr. Pratt: I beg pardon?

Mr. Faulkner: It has already been passed once.

Mr. Pratt: Well, I would like to pass it again.

Mr. Faulkner: You passed it once. You cannot pass it again. You passed an exhibit to the jury once, then it becomes an argument. I submit that objection. You cannot pass and repass exhibits to the jury.

The Court: Well, the jury has seen it once. That should be sufficient for all purposes.

Mr. Pratt: I had forgotten, if the Court please.

Q. How long were you on that ship, do you recall, Mr. Magee?

A. As I recall, we were on the vessel between two and three hours; possibly two hours.

Q. During all of that time what was happening?

A. During almost all of that time Colonel Hand was candling eggs. Part of the time I was standing beside him, and other times I was talking to some of the crew members.

Q. I now direct your attention to a visit that I believe you made on the steamship Cape Charles. Do you recall that?

A. I recall being on the Cape Charles. I have my notes here covering a certain phase of that.

Mr. Faulkner: May I have the Cape Pillar notes, please?

Mr. Pratt: When was that?

(Testimony of E. Hewitt Magee.)

The Witness: The Cape Charles was on April 29, 1944. [2637]

The Court: Do you wish those marked for identification?

Mr. Faulkner: Yes, your Honor.

(The documents were marked Defendants' Exhibit BJ for Identification.)

Mr. Pratt: Q. What is the date when you visited the Cape Charles?

A. That was April 29, 1944.

Q. With whom did you go on this boat?

A. I went aboard that vessel with Special Agent Dallas Johnson and Major Evans.

Q. Where was the vessel?

A. Well, at the time we actually went aboard the vessel she was out in the San Francisco Bay.

Q. You were on the pier first, were you?

A. We had been at Pier 18 where the vessel was tied up, and found out it was shortly going out in the stream, so we went out later to her.

Q. Then you and Agent Johnson and Major Evans went in a small boat out to visit that ship later? A. That is right.

Q. In the stream? A. Correct.

Q. When you got out there, did you see certain eggs?

A. When we boarded the vessel I observed the eggs on the deck, near the stern end of the ship. They hadn't been put away as yet in the chill box.

Q. They were on the deck, you say, the eggs were? A. Yes, they were.

(Testimony of E. Hewitt Magee.)

Q. How many cases of eggs were there?

A. There were 36 cases of eggs on the deck.

Q. Did you see an invoice or a copy of the invoice of Nye & Nissen [2638] on the boat?

A. Yes, I did. I asked the steward for one.

Q. I show you Exhibit 98 and ask you if that copy is the same as the one you saw on the boat?

A. Yes, it is. It is either a carbon of the same one or the one I saw on the boat.

Q. I observe that this invoice charges for 36 cases of eggs, Medium, Processed, AA. You say you saw 36 cases of eggs there.

A. Yes, I did.

Q. How were they marked, how were they stamped, if they were stamped?

A. Of the 36 cases of eggs I observed that four cases were not stamped with any Department of Agriculture stamp. 32 of them were marked with a U. S. Department of Agriculture stamp containing a date, April 27, 1944, and giving a grade U. S. Grade AA. One case bore a U. S. Veterinary Corps stamp with the date March 9, 1944.

Q. Was there also a Department of Agriculture stamp on that same case?

A. I believe so. I believe that stamp was in addition to the Department of Agriculture stamp because of the fact I just have a total of four that were not stamped with any inspection stamp.

Q. Those that were not stamped, they also bore a label on them of Nye & Nissen?

(Testimony of E. Hewitt Magee.)

A. All the cases in the 36 cases bore a Nye & Nissen "Biddy", green "Biddy" egg label.

Q. Were there any markings on those labels that you observed [2639] other than the inspection stamps?

A. No. The 32 that had inspection stamps and four had none; they were the only other markings that I observed on the labels except for the regular printing that appears thereon.

Q. Also included in the invoice were 3 cases of Cheddar cheese and 10 boxes of butter. Where did you see this cheese?

A. Well, I saw the cheese in a box in the chill box, although I didn't examine it closely or weigh it. That was performed by another agent.

Q. By whom?

A. By special agent Dallas Johnson.

Q. You went to the chill box, did you?

A. I just looked in there to see if he had found the cheese. I observed the cheese there which he was examining.

Q. How about the butter, 10 boxes of butter?

A. Well, there was butter in the chill box which had been put in and was there, but I didn't examine the butter except from—I just saw it piled up in the chill box.

Q. In the times that you were on the Cape Charles was there anything else that you observed in connection with either the eggs or the cheese or the butter?

(Testimony of E. Hewitt Magee.)

A. Well, I observed Major Evans handling the eggs and weighing the individual eggs.

Q. Where was that done on that ship?

A. That was performed in a small deck house which was built on the deck of the ship and near where these eggs were piled. We carried certain [2640] cases in there so he would have a dark room to perform his candling work.

Q. You did not assist him, did you, in candling?

A. Well, he performed all of the actual candling, although I helped him carry cases in there and I watched him for a time while he was doing that work.

Q. You were on the boat some considerable length of time?

A. We were on the boat from two to three hours. We arrived there after lunch, as I recall, about one or two o'clock in the afternoon, and left, I would say, 4:30 or 5 o'clock.

Mr. Pratt: If the Court please, the testimony of the witness in regard to the Cape Charles relates to the second count of the indictment specifically, and also relates to the first count, as to similar transactions or as to overt acts.

Q. Now, Mr. Magee, did you visit the steamship Henry White along about that same time?

A. Yes, I did.

Mr. Faulkner: May I have the Cape Charles notes?

Mr. Pratt: Q. When did you visit the steamship?

(Testimony of E. Hewitt Magee.)

Mr. Faulkner: Just a minute. May that be marked for identification, the memoranda?

Mr. Pratt: That has been marked.

Mr. Faulkner: The one he is using now.

Mr. Pratt: When did you visit the Henry White?

A. Well, that was about May 3rd.

(The document was marked Defendants' Exhibit BK for Identification.) [2641]

Mr. Pratt: If the Court please, the testimony in relation to the Henry White refers to the seventh count of the indictment, and also to the first count.

Q. You say you visited the Henry White on what day? A. May 3, 1944.

Q. In whose company?

A. Special Agent Dallas Johnson and Colonel Hand.

Q. Where was this ship?

A. The Henry White was at Pier 1, Howard Terminal in Oakland.

Q. At that time when you were on the ship did you see an invoice, or a copy of an invoice from the Nye & Nissen to the Government?

A. Yes, I did.

Q. I direct your attention to Government's Exhibit 53, and ask if you can tell by looking at that whether that is identical with the invoice you saw on the ship on that occasion.

A. Yes, it is.

Q. I note that this invoice, among other things calls for 50 cases of eggs, Medium, Processed, AA. Did you see some eggs there?

(Testimony of E. Hewitt Magee.)

A. Yes, we saw 50 cases of eggs on that vessel.

Q. Where were they?

A. They were in the chill box.

Q. Did you observe the markings and the labels on these 50 cases? A. Yes, we did.

Q. In this lot of 50 cases?

A. Yes. In the lot of 50 cases there were nine which had no inspection stamp of the U. S. Department of Agriculture or of the Army on either the [2642] labels or the boxes. 41 of the cases were marked with the U. S. Department of Agriculture stamp indicating that they would grade AA and containing the date in the stamp of April 29, 1944.

Q. Were all of these cases of eggs examined and candled by Colonel Hand?

A. These eggs, yes, were all candled, not all, but representative sample cases were taken from the complete lot and candled by Colonel Hand.

Q. Where was that done?

A. I don't recall exactly what part of the ship. I think probably it was done in the laundry room, where it was dark and he could use his candling light. [2642-a]

Q. As to the unstamped cases, did you examine the eggs in any of these cases?

A. I observed the eggs at the time Colonel Hand was performing part of his candling work, and I saw some of the eggs in the unstamped cases at that time.

Q. Did you see some of these cases opened in your presence, these unstamped cases?

(Testimony of E. Hewitt Magee.)

A. Yes, they were.

Q. Did you find any cards or anything of that sort inside any of these cases?

A. Yes, I believe in at least one of the cases there was a card. On numerous occasions when we found cards we took them out and kept them.

Q. I will show you a card, which is Government's Exhibit 36 for Identification, and ask if you can identify that card (handing a document to the witness):

A. Yes, I can. This cards bears the name Henry White, the date May 5, and my initial.

Q. Where was that card found?

A. That card was in the top of the case, underneath the top boards.

Q. Underneath the cover?

A. Underneath the cover in one of the unstamped cases.

Mr. Pratt: I offer this in evidence, if the Court please, this Exhibit 36 for Identification.

Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial and not binding on the defendant, your Honor, and not within the issues of this case.

The Court: The objection is overruled. Let it be admitted in evidence. [2643]

(U. S. Exhibit 36 for Identification was thereupon admitted in evidence.)

Mr. Pratt: Q. I will show you another, which is Exhibit 37 for Identification. Did you find that card in one of these cases?

(Testimony of E. Hewitt Magee.)

A. Yes, I did. This card also bears the name SS. Henry White, my initial and the date, and that came out of one of these cases on the vessel.

Q. I show you another one, which is Exhibit 38 for Identification. Did that also come out of one of the cases on that boat?

A. Yes, it did. This also bears the name of the ship, the date, and my initial.

Mr. Pratt: 37 and 38 for Identification are both offered in evidence, if the Court please.

Mr. Faulkner: The same objection, your Honor.

The Court: They may be admitted and marked. The objection is overruled.

(U. S. Exhibits 37 and 38 for Identification were thereupon received in evidence.)

Mr. Pratt: I would like to pass these three cards among the jurors, if the Court please.

(The documents in question were thereupon passed to the Jury.)

Mr. Pratt: Q. Each of these cards was under the top cover inside the box, is that right? Inside the case?

A. That is right. When we pulled the top off the card would [2644] be there on top of the case.

Q. And they were in the same condition, were they, so far as the pencil writing and the word "Pulled" on two of them and "Peeled" on the other?

A. Yes, they were the same except for those red markings on there.

(Testimony of E. Hewitt Magee.)

Q. Those red markings is part of your identification, is that right? A. That is right.

Q. Was there anything else that you observed on the steamship Henry White other than you have testified to?

A. No sir, except for the cards as found by Colonel Hand. I was present at the time, I believe, he made out his inspection sheet.

Q. That was his work and his act, was it not? You had nothing to do with it?

A. No, I did not candle those eggs.

Q. Along about that same time did you visit the steamship Mission San Diego?

A. Yes, I did.

Q. Do you have some memoranda about your trip there? A. Yes, I do.

Mr. Pratt: Mr. Faulkner, do you want these notes marked for identification?

Mr. Faulkner: Yes, I do.

The Court: Let them be admitted and marked for the purpose of identification.

(The document was thereupon marked Defendants' Exhibit BL for Identification.)

Mr. Pratt: Q. When was it that you visited this ship? [2645]

A. We went on board that vessel May 11, 1944.

Q. With whom?

A. I was with Special Agent Dallas Johnson and Major Evans.

Q. Where was the ship?

(Testimony of E. Hewitt Magee.)

A. It was at the Amship Corporation pier, which is at the foot of Alice Street in Oakland.

Q. When you went on this ship did you see an invoice of Nye & Nissen to the Government?

A. Yes, I did. It was shown to me by the chief steward of the vessel.

Q. I direct your attention to Exhibit 153, an invoice from Nye & Nissen to the Government describing 10 cases of eggs, Medium, Processed, A, a case of Romano Dolce cheese, a case of processed American cheese, a case of Cheddar Loaf, 5 boxes of butter AA; can you identify that as identical with the invoice that you saw on the ship?

A. Yes, this is.

Q. When you got onto this ship did you see these various products that are described in the invoice?

A. Yes, I did. They were all in the chill box on the vessel.

Q. How many cases of eggs did you look at?

A. I looked at ten cases of eggs which bore labels of the Nye & Nissen Company, the regular green "Biddy" egg label.

Q. Did they have a Department of Agriculture stamp on them?

A. None of these ten cases had any inspection stamp of any description.

Q. Were you familiar with the inspection stamp of the War Food Administration?

A. I am familiar with it that it is the [2646]

(Testimony of E. Hewitt Magee.)

same one as the U. S. Department of Agriculture, so far as I know.

Q. You say there was no inspection stamp of any sort on any of these ten cases of eggs?

A. No, there was not.

Q. And what did the label, the green "Biddy" label have on it?

A. Well, marked on each one of the labels was a notation, Medium, Grade A, appearing to be put on by a rubber stamp. That was stamped across the labels in most cases, I believe. If it was not on the label on every one of the cases it was stamped somewhere on the box.

Q. I direct your attention to Exhibit 49 for Identification and I ask if you can identify this label.

A. Yes, I can. This is one of the labels. That was on one of the ten cases. This labels bears the name of the ship, the date, and my initial. They were all marked with that Medium Grade A.

Q. I also direct your attention to the Exhibit No. 50 and ask if you can identify that as also having come from one of the cases on that boat?

A. Yes, this came from the vessel. It has my initial.

Mr. Pratt: Exhibits 49 and 50 for Identification are offered in evidence, if the Court please.

The Court: They may be admitted.

Mr. Faulkner: Same objection as when similar exhibits were offered, your Honor.

The Court: Let them be admitted and marked.

(Testimony of E. Hewitt Magee.)

Mr. Faulkner: Exception. [2647]

(U. S. Exhibits 49 and 50 for Identification were thereupon received in evidence.)

Mr. Pratt: Q. I think you have said that these labels are just like the other labels on the other cases?

A. Yes, they are.

Q. None of which had an inspection stamp on it? A. That is right.

Q. Who candled these eggs or any part of them on that ship?

A. Major Evans candled part of the lot of eggs on that vessel. The candling, as I recall, I believe, was done right in the chill box.

Q. Now, the cheese that was on this vessel, did you see that cheese?

A. Yes, I saw that cheese and weighed it.

Q. Now, there was one case of Romano Dolce cheese described in the invoice as 65 pounds. Did you weigh that case of Romano Dolce cheese?

A. Yes, I did.

Q. How much did it weigh?

A. That cheese weighed 57 pounds and 13 ounces. There was a box containing six flat wheels of Romano Dolce cheese, which totalled a net weight of 57 pounds, 13 ounces.

Q. You took them out of the box to weigh them, did you?

A. We opened the box, took the cheese out, and put it on our scale.

(Testimony of E. Hewitt Magee.)

Q. What kind of scale did you have?

A. We used a brand new scale that we borrowed from the Post Office. I believe the [2648] name is "Trainor"—T-r-i-n-e-r.

Q. Before using it in weighing, did you have the scale inspected?

A. Yes, we did. The scale was sealed by the Post Office before we obtained it and then we took it on three occasions to the Department of Weights and Measures at the City Hall and had it tested for accuracy.

Q. And it was found to be accurate?

A. It was on each occasion.

Q. Included in this invoice also is a case of Cheddar Loaf Cheese, 30 pounds. Did you weigh that Cheddar Loaf Cheese?

A. I weighed that cheese and found it to have a net weight of 24 pounds, 7 ounces, and that was contained in a box which bore a marking on the outside, "Cheddar Factory 1621, Whole Milk, Nye & Nissen Co., S. F., 9-29-1".

Q. How about the Romano Dolce cheese? What label did that have on it?

A. The Romano Dolce cheese had stamped right on the cheese "Whole Milk, Romano Dolce type, Factory 1621".

Q. Was there anything else that occurred on that vessel, the Mission San Diego, that you have not already described?

A. I can't recall anything else. I think I men-

(Testimony of E. Hewitt Magee.)

tioned that Major Evans candled and examined the eggs.

Q. Yes. A. We weighed the cheese.

Mr. Pratt: I direct the Court's attention to the fact that the testimony relating to the Mission San Diego relates [2649] to the third count of the indictment and also to the first count as an overt act under the conspiracy.

Q. About that same time did you visit the steamship Cape Cumberland?

A. Yes, I did.

Q. When was that?

A. That was the same time, May 11, 1944.

Mr. Falkner: May the Cape Cumberland be marked for identification, please?

The Court: It may be admitted and marked.

(The notes of the witness on the Cape Cumberland were marked Defendants' Exhibit BM for Identification.)

Mr. Pratt: Q. And you made notes at the time of what you observed and you have them in your hand?

A. That is right.

Q. When was it? You say it was May 11. Where was it that you went on this vessel?

A. This vessel was at Berth 6, Outer Harbor, Oakland.

Q. With whom did you go?

A. I went with Special Agent Dallas Johnson and Major Evans.